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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

MICHELLE DOTSON, ET AL, .
PLAINTIFFS, .
vs. . DOCKET NO. SA:19-CV-83-XR
BEXAR COUNTY, ET AL, .
DEFENDANTS. .

TRANSCRIPT OF MOTION TO DISMISS PROCEEDINGS
BEFORE THE HONORABLE XAVIER RODRIGUEZ
UNITED STATES DISTRICT JUDGE
MAY 9, 2019

APPEARANCES:
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6 REPORTED BY:

GIGI SIMCOX, RMR, CRR
OFFICIAL COURT REPORTER
UNITED STATES DISTRICT COURT
SAN ANTONIO, TEXAS

1 (San Antonio, Texas; May 9, 2019, at 10:30 a.m., in open
2 court.)

3 THE COURT: 19 civil 383, Michelle Dotson and others
4 versus Bexar County.

5 MR. SACHANOWICZ: Good morning, Judge. Leslie
6 Sachanowicz here for the Dotson family, and Valerie Hedlund.

7 THE COURT: Thank you.

8 MS. CAVARETTA: Your Honor, it's Laura Cavaretta on
9 behalf of the Bexar County Hospital District doing business as
10 University Health System.

11 MR. PIATT: Your Honor, Robert Piatt on behalf of
12 Bexar County, Mike Lozito, and Sheriff Javier Salazar.

13 MR. KOSANOVICH: Mark Kosanovich on behalf of the
14 City of San Antonio and Officer Kohlleppe.

15 THE COURT: Thank you.

16 MR. KOSANOVICH: Kohlleppe, your Honor. I
17 apologize.

18 THE COURT: Is that how you say it, Kohl --

19 MR. KOSANOVICH: Kohlleppe.

20 THE COURT: Kohlleppe. Okay. It's not Kohl-lapel,
21 it's apple?

22 MR. KOSANOVICH: Apple.

23 THE COURT: Okay. Thank you.

24 Tragic case here. So Miss Dotson was a pretrial
25 detainee in the jail. She was picked up for criminal trespass

1 on July 17, 2018. She spends 151 days in jail. I mean -- is
2 this true? -- without appearing before a judge for a Class B
3 misdemeanor? And then she dies in custody. What happened?

4 MS. CAVARETTA: Your Honor, Miss Dotson was placed in
5 the infirmary because she identified or was known to have a
6 psychiatric disorder. She was kept in the infirmary where she
7 was monitored.

8 She refused to have her blood pressure taken. She
9 refused any interventions, and she refused to go to court.
10 She refused meeting with her attorneys. The psychiatrist sent
11 a letter to the court and said, we need to get an order for
12 her to be evaluated because she's not mentally competent.
13 Then an evaluation was done.

14 And I don't believe her attorney ever met with her or
15 followed up on the evaluation and she unfortunately died in
16 the jail of a heart attack. She had a history of heart
17 disease in her family and she was found nonresponsive in the
18 medical unit when they went to check on her. She had died
19 from a heart attack, not anything related to the process.

20 THE COURT: So I thought the court-ordered competency
21 evaluation was not in the file, so how do you know one was
22 actually done?

23 MS. CAVARETTA: My understanding is that one was done
24 and that -- and this I'm taking from the county's attorney,
25 which maybe I should let him answer that question since it's

1 not my information. Is that okay?

2 THE COURT: Sure.

3 MR. PIATT: Yes, your Honor.

4 In this case, the magistrate did hear the issue of
5 her competency, ordered a competency evaluation to be
6 completed. One of the exhibits to the latest amended
7 complaint is that order where the magistrate judge set a time
8 line for the evaluation to take place and then get returned to
9 the court, not to the magistrate, but to County Court 4 where
10 this matter was pending. The evaluation took place I believe
11 in September, September 12th, and the report made it back to
12 the court by October 4th or 5th.

13 My understanding, based on the information so far, is
14 that it was received by County Court 4, that a clerk
15 considered it to be HIPAA protected information, sealed it,
16 and put it in the file. This, combined with what appears to
17 be inactivity by the court-appointed counsel meant that this
18 evaluation was done but was never acted upon and the
19 magistrate judge never came back for the second part to
20 declare her incompetent.

21 By the way, your Honor, I still cannot access what is
22 actually in that HIPAA file in County Court 4 because they
23 said that it's HIPAA protected information. I'll need an
24 order to see it. But I believe that it will say that the
25 evaluator determined her to be incompetent and it was never

1 acted upon.

2 THE COURT: Wow. So a series of mistakes, but how
3 does this get us to all the constitutional and statutory
4 violations you-all are alleging?

5 MR. SACHANOWICZ: Well, your Honor, just one other
6 caveat is, the last entry in her medical records on December
7 14th, the morning that she died, there was an entry saying
8 that she's awaiting competency hearing. When we got the
9 medical records, there was no evaluation in the medical
10 records. So that's just -- and also, when I looked in the
11 actual case jacket, there was no evaluation there.

12 And I think this is really what's important, Judge.
13 What the medical records really do is reveal that Miss Dotson
14 was there for 151 days, she lost 146 pounds. That's the size
15 of a human being. Quite frankly, she was quite ill.

16 To answer your question, how is this a constitutional
17 violation, we are alleging the violation of the Equal
18 Protection Clause, just like in *Odonnell* and *Graham*, in terms
19 of the deprivation of her liberty because she could not afford
20 to pay the \$300 in bail --

21 THE COURT: So let me break this apart, though. So
22 as to the hospital, though, so the hospital has filed a motion
23 to dismiss and a 12(c) motion. I mean, how do any of your
24 claims survive against the hospital?

25 MR. SACHANOWICZ: If you look, we also filed a motion

1 for a third amended complaint because we didn't have the
2 medical records when we filed a second amended complaint. So
3 how it survives for the hospital, Judge, is that in a third
4 amended complaint we specifically name Dr. Yao, Jessica Yao,
5 which in the records she appears to be the director of the UHS
6 Correctional Services.

7 And those records, those records reveal a pattern of
8 practice of deliberate indifference. I'm talking about the
9 hospital district. She was seen and refused her meals 110
10 times. Nobody -- other than making notations that she refused
11 the meals, there was nothing else that was done.

12 There was a lot of, I would say, proposals for plans
13 in the medical records, but also there is no entries or
14 narratives for any treatment. Also, the medications page is
15 totally blank in the medical records. And so --

16 THE COURT: Don't we already know that through the
17 absence of any kind of medications in her bloodstream that
18 none were given?

19 MR. SACHANOWICZ: Until discovery is completed, I
20 won't know that. And usually the medications dispense page
21 will be totally blank.

22 So what you can see is, specifically on page 15 -- I
23 have an actual copy of my third amended complaint I'll be
24 happy to share with the court -- on page 15 and 16 you can see
25 the number of times Miss Dotson was seen. And the fact is, is

1 all the entries indicate just sort of what I would call a
2 cutting and pasting saying this person is waiting for a
3 competency evaluation, you know. So there is a lot of markers
4 along the way. There is a pattern, seems to be, of not
5 addressing the issue.

6 And, in fact, Mr. Ule, who died in April 14th in the
7 same area, he was a similar type person, similar background.

8 And it's true that the autopsy report says there is
9 two contributing factors, one is she had an enlarged heart or
10 a heart attack; and then psycho -- I can't pronounce it,
11 but -- schizoaffective disorder.

12 And, to think, if someone who has schizoaffective
13 disorder, the stress it would put on that person, if they are
14 not medicated, if they are not treated. And I've talked to
15 the family, and without medication and treatment, she would
16 refuse to eat, so she basically died in psychological or
17 physical isolation because of the hospital district not taking
18 care of her. There is a pattern here.

19 I mean, when I read that she had lost 146 pounds,
20 Judge, I mean, to me, it's just horrific. This smacks of a
21 Third World country, that somebody should lie there and some
22 nurse telling the person saying, you know what? -- you want
23 some water, there is some water in your tap. That's just an
24 example. But the thing is, it's sad for that person. And
25 it's clear that it's cruel and unusual punishment.

1 THE COURT: So someone from UHS want to address this?

2 MS. CAVARETTA: Absolutely, your Honor.

3 THE COURT: Why shouldn't I just grant the amended
4 complaint, grant Docket 47, moot 38, which was an earlier
5 version of a motion to amend complaint and dismiss without
6 prejudice 37, which is your motion?

7 MS. CAVARETTA: First of all, when this lawsuit was
8 filed, or before this lawsuit was filed, plaintiffs' counsel
9 never requested medical records. You don't have to file a
10 lawsuit to get medical records. You show up to the health
11 system with an authorization and you get the medical records.
12 No authorization was ever presented until after our pretrial
13 conference, or our —

14 THE COURT: 26(f)?

15 MS. CAVARETTA: Right.

16 And so this lawsuit was filed without ever looking at
17 the medical records, which I think is lack of diligence on the
18 plaintiffs' part. And when the lawsuit was filed in state
19 district court it contained no allegations against UHS. It
20 just said defendants were negligent and it had like some
21 captions that said, Wrongful Death UHS, Civil Rights UHS, but
22 no facts.

23 THE COURT: He was trying to avoid the Temple of
24 Doom, being federal court.

25 MS. CAVARETTA: Correct.

1 THE COURT: Right.

2 MS. CAVARETTA: And so then we entered the Temple of
3 Doom and I filed a motion to dismiss. And in response to that
4 they sought leave -- actually they didn't seek leave, they
5 just filed an amended complaint. I pointed out that you need
6 to seek leave. They finally did that. The court granted
7 leave. And in your order granting them leave you mention that
8 obviously you have discretion, and one of the -- some of the
9 factors to consider are undue delay, dilatory motive, repeated
10 failure to cure deficiencies.

11 And in this particular case the court, in its
12 infinite wisdom decided, we'll let him file an amended
13 complaint. They did. And they did that in the face of my
14 motion to dismiss, which specifically set out all of the
15 things that they did not plead as to UHS. They filed a second
16 amended complaint and they didn't cure anything.

17 THE COURT: So let's talk about their attempted third
18 try.

19 MS. CAVARETTA: So their attempted third try --

20 THE COURT: Well, from your reading of it, does it
21 cure your allegations or your issues, or not?

22 MS. CAVARETTA: I don't believe it does.

23 THE COURT: And why?

24 MS. CAVARETTA: Because they do not explain how UHS's
25 failure caused Mrs. Dotson's death. So, okay, yes, she lost

1 150 pounds.

2 THE COURT: But can't we attribute to the fact that,
3 you know, she was -- because of the lack of medications and
4 the lack of food, frankly, why couldn't those two issues,
5 again this is a plausibility standard, why couldn't the
6 combination of those two issues have also contributed to the
7 heart failure?

8 MS. CAVARETTA: I think they would need to plead
9 that. And they haven't. They've just said, she was seen this
10 many times, she lost weight, she died. And she should have
11 been -- and, yes, the record does say she was awaiting the
12 competency hearing, because she was.

13 Because, as Mr. Piatt explained, the evaluation was
14 done and sent to the court and the court didn't have a
15 hearing. The medical records also contained many entries by
16 UHS employees contacting the court and contacting pretrial
17 services, saying, hey, are you going to do anything about this
18 lady? And so what we have is a situation where -- and the
19 other thing is --

20 THE COURT: So wait a minute. Hold on. UHS, are you
21 a county jural entity, or what are you-all?

22 MS. CAVARETTA: So we are a political subdivision of
23 the State of Texas, a separate legal entity from --

24 THE COURT: I'm trying to figure out if one element
25 of the county was throwing the other element of the county

1 under the bus.

2 MS. CAVARETTA: No.

3 THE COURT: But you are a separate jural entity,
4 okay.

5 MS. CAVARETTA: Separate legal entity, and we are in
6 the facility at the pleasure of the sheriff's department.
7 They control and the police department controls who comes
8 there, and when they can leave, and when they can't leave, and
9 where they get assigned; except that we recommend. And in
10 this case they said yes, she needs to be in the infirmary,
11 which is where somebody gets seen. And she was seen three to
12 four times a day.

13 In your last order when you said, well, I'll go ahead
14 and let them amend, one of the other factors you considered is
15 they weren't trying to name new parties. In their motion for
16 leave they don't advise the court of this but they are trying
17 to add Dr. Yao as an independent.

18 THE COURT: And so how is UHS prejudiced, I mean, if
19 that's the other factor? I mean, we've just started this
20 litigation. I mean, this is an awful case. Somebody made a
21 mistake. Now, whether we're going to get to the issue, I
22 mean, frankly, what makes these cases so difficult is, you
23 know, between all the immunities that may or may not be
24 applicable here, this may not all -- this may come to not.
25 But, I mean, at this point, this is a plausibility 12(b)(6)

1 standard, and so how are you prejudiced?

2 MS. CAVARETTA: And I guess it comes down to I filed
3 my first motion to dismiss. Then they filed an amendment,
4 which didn't comply or do what it needed to do. So then my
5 client incurred fees for me to file the second motion to
6 dismiss. Then they seek leave of court to file the third
7 amended complaint.

8 And it just boils down to how many chances does
9 somebody get, when they did not do their own due diligence and
10 even obtain the records, which they should have had before
11 they even filed suit, in my opinion. And if the court is
12 inclined to grant them leave, then, again, I'm assuming that
13 my motion to dismiss would be denied as moot, as you did the
14 last time, and so then I would file yet another motion to
15 dismiss based on the new pleadings and address the issue yet
16 again. And so the prejudice really is delay and attorneys
17 fees that my client is incurring for me to -- they keep moving
18 the ball and I keep having to go chase it down.

19 THE COURT: Do you want to respond?

20 MR. SACHANOWICZ: Yes, your Honor.

21 In this last pleading we've been very mindful of the
22 parties, and, in fact, what we did is we took all the parties
23 out individually, realizing that, really, if there was any
24 action against them, it would be in their official capacity,
25 to try to clean up the pleadings, because I've worked those

1 cases before and this becomes an issue in terms of the case.

2 So we have exercised good faith, Judge. And I
3 apologize to the court. The month of March was kind of hectic
4 for me. I had three jury trials. So it's on me. I
5 understand that. But this doesn't deserve -- the fact is that
6 there is a colorable claim in here against UHS Correctional
7 Services. And I understand how they work. They are a
8 separate legal entity, separate from the county.

9 So there's two issues here. Was Bexar County cruel
10 and unusual to Miss Dotson? We don't know. I think they
11 plausibly have, based on the -- just on the medical records
12 that we found, has UHS Medical -- Correctional Services been
13 cruel and unusual punishment for Miss Dotson? I think the
14 answer is plausible, yes, because just in the medical records
15 she was seen three times a day.

16 Well, that's an admission saying, yeah, I looked at
17 you three times a day but I didn't do anything to you for your
18 treatment three times a day for 150 days.

19 THE COURT: So I'm going to yet again grant you leave
20 to amend. I mean, this is just a case that -- I mean, I think
21 everybody deserves to know what happened so it doesn't happen
22 again. And ultimately this may just come down to County Court
23 of Law #4 messed up, and its employees messed up, and
24 unfortunately, even if that's the case, it may be that all of
25 this is going to be barred by immunity, but the public and the

1 family of Miss Dotson at least deserves to know what happened.

2 But, Mr. Sachanowicz, you have to -- this next time
3 around, let's not file what you propose. Let's do another
4 look at it closely, because I'm looking at that amended
5 complaint coming in and some of your allegations. I don't
6 know if you are saying, was this an intentional act? Or was
7 this a negligent act? And so then I'm left wondering, okay,
8 is the Tort Claims Act going to apply here? Or is the tort
9 claims immunity going to apply here?

10 MR. SACHANOWICZ: We actually took out all the
11 wrongful death claims in this pleading also, so we are going
12 strictly on the 1983 action.

13 THE COURT: So, again, you know, I'm going to give
14 you your one last, best shot at filing a complaint.

15 MR. SACHANOWICZ: Okay.

16 THE COURT: I'm going to give you leave to file a new
17 complaint. If you think you are going to stand by what I just
18 read, giving you my little hints about what I'm concerned
19 about, you want to stand by that, then you are welcome to
20 stand by that, but if you want to file something else that
21 cleans it up further, you are welcome to do that as well.
22 But, I mean, at some point I do need to close the pleadings at
23 some point.

24 MR. SACHANOWICZ: Okay. We will do that, Judge.

25 THE COURT: So UHS -- well, here's the ruling then.

1 47 is granted. You have leave to file a new complaint within
2 14 days.

3 38 is dismissed as moot.

4 37 is denied without prejudice to leave to file a new
5 motion to dismiss.

6 With that said, where are we at on discovery? Are we
7 going to just wait for another round of pleading fights, or
8 are we going to move forward, or what are we going to do?

9 MR. SACHANOWICZ: Judge, we are drafting discovery
10 right now and trying to be very succinct about it. We talked,
11 we conferred in a pretrial conference, and my intention is not
12 to do the broad brushstroke, and sort of ask specific
13 questions as to the policies within the UHS Correctional
14 Services, which is separate from Bexar County, and so in terms
15 of what happens in the bail process and the personal bond
16 process.

17 So we're in the process of drafting those and my hope
18 is to get those to the defendants within the next 30 days.
19 And I don't foresee taking a lot of depositions. I mean, at
20 this time I don't think Sheriff Salazar is going to have
21 personal knowledge of this. It's going to be based on what
22 his support staff did. So it's going to be very tailored.
23 It's not kind of, like I said, a broad brush approach.

24 MS. CAVARETTA: And, your Honor --

25 THE COURT: Yes.

1 MS. CAVARETTA: In terms of discovery as to UHS, I do
2 believe that we need to get the pleadings cleaned up and let
3 me address whether or not they have a claim against UHS before
4 my client is put to the expense of producing documents and
5 providing information, because at this point in time they
6 finally got the medical records.

7 They have what they need to be able to either assert
8 a claim against us or not. And if in 14 days they file a
9 petition or a complaint that I don't need to file a motion to
10 dismiss, then we can move on from there, but I anticipate that
11 I'm going to be filing another motion to dismiss.

12 THE COURT: Yeah. I'm sure we are going to hear
13 other motions to dismiss by some of the other employees. So I
14 have been putting the hospital district to some extra expense,
15 so I'll give you that.

16 You look at the medical records first and if you want
17 any more depositions past that, speak to Miss Cavaretta, and
18 if you can reach an agreement, fine, but if there is a dispute
19 then I'll figure out what additional discovery you are
20 entitled to.

21 MR. SACHANOWICZ: Okay.

22 THE COURT: Last thing before I forget, so I can't
23 remember what you did in this last proposal, but Bexar County
24 Pretrial Services.

25 MR. SACHANOWICZ: We have nonsuited them also.

1 THE COURT: Okay. Because they are the same as Bexar
2 County.

3 MR. SACHANOWICZ: What we did is we tried to clean up
4 the pleadings because they are a nonentity, and then took out
5 the people individually, and then we dropped the wrongful
6 death claims, and just -- we weren't sure whether Dr. Yao was
7 the director or not, or the acting director, so we're not
8 going to have service on her until we file the next amended
9 complaint.

10 THE COURT: Where does the City of San Antonio fall
11 into this?

12 MR. KOSANOVICH: If I may, your Honor.

13 I'm following along with what Mr. Sachanowicz said a
14 moment ago. I currently have on file an answer for the City
15 of San Antonio and Officer Kohlleppe. In his third amended
16 petition they have dismissed him in his individual capacity.

17 And if that's the route that we are going to take,
18 then I would ask that the court enter an order dismissing him
19 in his individual capacity because he's no longer going to be
20 a defendant before the court, because I went back and I double
21 checked the pleading and they initially had him in his
22 individual capacity.

23 Officer Kohlleppe is the individual who arrested
24 Miss Dotson. I'm going to throw out the date here, your
25 Honor, six, seven months before her death, and it was for the

1 criminal trespass at an apartment complex.

2 THE COURT: It was July. August, September, October,
3 November, December. Five months.

4 MR. KOSANOVICH: Somewhere in there.

5 THE COURT: Yeah.

6 MR. KOSANOVICH: So he booked her. She refused to
7 leave the property and then she was telling him that she
8 wanted to go to jail. And the owner of the property, or the
9 apartment complex manager, I believe Miss Dotson's husband
10 actually lived there at some point, or lived there, but the
11 manager had asked that she be removed, in other words, the
12 criminal trespass. Your Honor, I'll cut to the point. It's
13 all on body camera.

14 THE COURT: So you can get discovery from what
15 happened, but, I mean, how is that relevant to 151 days she
16 spent in there, the denial of food, and all of that, that
17 caused this, maybe this death? I mean, just what do you have
18 against the officer and the City?

19 MR. SACHANOWICZ: I refer the court to, I think it's
20 paragraph 111, is what happened is with regards to the
21 officer, Miss Dotson had been previously arrested or detained.
22 And in those previous, three previous occasions, we were able
23 to discover from the SAPD reports is they were classified as
24 mental health disturbances. The arresting officer has
25 discretion under their policy manual as to whether to do like

1 a civil commitment or a criminal commitment.

2 And, in fact, we're alleging that they were imparted
3 with the knowledge, because it was from their computer system,
4 so when you put her name in the system, he would see that this
5 person, Dotson-Stephens, previously had this -- had this, you
6 know, and so --

7 THE COURT: But isn't all of that going to be barred
8 by qualified immunity? How do you get around that?

9 MR. SACHANOWICZ: They won't, Judge, because there's
10 a policy and practice. They are not following the policy or
11 practice and --

12 THE COURT: But you just told me the practice -- the
13 policy is that the officer has discretion; right?

14 MR. SACHANOWICZ: Right. But the practice is, and
15 this is why the DA Joe Gonzalez instituted this policy
16 probably about two or three weeks ago, that any criminal
17 trespass case or criminal mischief case, if it involves a
18 homeless person, then his office will not prosecute.

19 Because what's happening is, and this happened with
20 Mr. Ule from two or three weeks ago, the officer again had
21 discretion, but what they are doing, the fact of doing, is
22 they are not actually following their own procedures and they
23 are taking everybody to the jail because it's easier, just
24 take them to jail.

25 Because this other policy, it's called the crisis

1 team, they have to do like an evaluation, you know. And so
2 what's happening is SAPD has gotten into -- I think discovery
3 will show if I just ask him, give me all the criminal
4 mischief, criminal trespass cases that you have, say, for
5 2018, and how are they dealt with involving a person with some
6 sort of mental incapacity, were they taken to the jail or did
7 you call the crisis team? And I think what's happening is
8 that SAPD, they have had this policy, but there are not
9 practicing their own policy.

10 MR. KOSANOVICH: If I may respond, your Honor.

11 THE COURT: Yeah.

12 MR. KOSANOVICH: Let me try to break this down,
13 because I think what Mr. Sachanowicz is trying to tell the
14 court is that we automatically take everybody to the jail for
15 whatever violation it may be.

16 Our policy has, if I remember correctly, and it's
17 been a while since I've read it when this case first came up,
18 there's kind of a fork in the road, and I'm giving this in
19 general terms, about where the officer can take an individual
20 depending on their assessment of the situation.

21 But, for Mr. Sachanowicz to stand here and say that
22 everybody that has a criminal mischief charge is being taken
23 to the jail, is then you are assuming that all of those people
24 would have to have some type of a mental incapacity and
25 therefore they should be taken for mental services, as opposed

1 to the other location.

2 But I guess the whole fallacy, where this whole thing
3 starts to line up is once they get to the jail they actually
4 have access to the services that Mr. Sachanowicz is now
5 complaining about, because once they get to the jail facility
6 they would actually have access to a doctor, a medical screen,
7 a medical evaluation or whatever service they provide.

8 So I guess what I'm not understanding is: What's
9 wrong with our policy? And so he's going to go off on to
10 discovery and try to have the City produce which would
11 potentially be thousands upon thousands of records, which I
12 would assume because of the number of people that would
13 potentially be arrested.

14 THE COURT: So let me ask you this while I've got you
15 up here. So I didn't understand him making the argument that
16 broad. I thought he was making the argument that if you were
17 homeless and previously known to be mentally incompetent, then
18 you were being sent to the jail rather than being routed to
19 some other service provider. That's what I thought I heard.

20 And so my question to you-all, though, is: Do
21 you-all keep records that, you know, when someone is called to
22 a scene you are able to identify who is previously known to
23 have suffered from some mental disorders? Or are you going to
24 have to produce -- can you even produce records that say, hey,
25 we encountered this guy, who is homeless?

1 MR. KOSANOVICH: Well, thank you, your Honor, because
2 I think we're kind of going down the same path here.

3 I don't know if when an officer goes to a scene,
4 let's say like with Miss Dotson, that he would — perhaps he
5 would have access to go through and look at her prior arrest
6 history, but whether an officer would have actually done that
7 on any certain day to look at John Q. Citizen, that he's just
8 got this criminal trespass issue with, or criminal mischief,
9 because those are two different things, then to go through and
10 look to see whether or not that officer actually went and did
11 research and then made a conclusion as to where he was going
12 to take him or her, it's not that precise, your Honor. I
13 don't think there is any requirement that any officer would
14 ever have to do that.

15 Basically what I'm understanding is they are going to
16 say that officers would then have to go back and do an
17 analysis of whether or not, well this guy is homeless, whether
18 he's not homeless, I don't even think we keep track of whether
19 or not they are homeless. Maybe it's written in a police
20 report because the individual might have told an officer that
21 he or she was homeless, but the analysis that he's talking
22 about, and even trying to capture discovery at that level is
23 — I don't even know if it's workable, your Honor.

24 MR. SACHANOWICZ: Your Honor, my response is that
25 there are ten policies that were ignored that are required by

1 the Sandra Bland Act by the City of San Antonio and by the
2 officer. And also my response is that I do both criminal and
3 civil law. I'm familiar with the back of the house on the
4 criminal side. I made open records requests. I was able to
5 get these records regarding Miss Dotson, which shows emergency
6 detention on -- this was on 9/19/2014.

7 And then he brings up a real interesting point. So
8 he says this is the attitude of the City of San Antonio, we'll
9 just take them to the jail. They will be examined there.
10 They will be treated there. All of that. Well, the jail has
11 failed, the jail standards, Texas jail standards.

12 In fact, we have attached that too where they have
13 civilians doing the medical in-taking of inmates, you know.
14 And so it's like everybody is passing the buck down sort of
15 forward, you know. And the fact is, the bottom line is, this
16 was an episodic event.

17 And in terms of deliberate indifference, he has
18 subjective knowledge of a risk of serious harm to Miss Dotson
19 because he chose not to follow the department policies. And I
20 don't need to do a lot of discovery, Judge. I just need to
21 understand how their system is. So if he's working with a
22 Dodge cam in the car and he plugs her name in, I'm sure it
23 pops up just like anything else. If you pop up somebody's
24 name in there and you have previous criminal history, it's
25 going to pop up.

1 THE COURT: The question is whether it will pop up
2 previous mental disorder.

3 MR. SACHANOWICZ: Well, I understand that, but what's
4 going to happen is her name will pop up. If I was able to get
5 this from SAPD, and I'm sure it's on their system, and so it
6 says here emergency detention. So I'm not going to ask for a
7 lot of discovery. I just want to understand first the
8 process. First, for me to understand the process, then we can
9 stop there.

10 THE COURT: Okay. So my understanding, though, is
11 you, in this next amended complaint you are filing, you are
12 not including the officer in his individual capacity; correct?

13 MR. SACHANOWICZ: Correct.

14 THE COURT: So that's the only written motion I have
15 before me, so that's granted. And I'll just take up all the
16 other, I'm sure, motions to dismiss that will be filed in this
17 case.

18 MR. SACHANOWICZ: Right.

19 THE COURT: Okay. Good luck.

20 MR. SACHANOWICZ: Thank you for your time, Judge.

21 (Concludes proceedings.)
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2 CERTIFICATE

3 I, Gigi Simcox, RMR, CRR, Official Court Reporter for the
4 United States District Court, Western District of Texas, do
5 hereby certify that the foregoing is a true and correct
6 transcript, to the best of my ability and understanding, from
7 the record of the proceedings in the above-entitled and
8 numbered matter.

9
10
11 s/Gigi Simcox, RMR, CRR
12 Gigi Simcox, RMR, CRR
13 Official Court Reporter
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